MYSORE ACT No. VI OF 1937.

THE MYSORE DEBT CONCILIATION ACT, 1937

(AS AMENDED BY ACTS XXVII OF 1942 AND VII OF 1951.)

(Received the assent of His Highness the Maharaja, on the fourth day of February 1937.)

An Act to make provision for the setting up of Debt Conciliation Boards in [1][the State of Mysore except Bellary District] to relieve Agriculturists from Indebtedness.

Preamble. Whereas it is expedient to relieve agriculturists from indebtedness by amicable settlement between them and their creditors ; It is hereby enacted as follows :—

Short title, extent and commencement. 1. (1) This Act may be called the Mysore Debt Conciliation Act, 1937.

(2) It extends to the [1][whole of the State of Mysore except Bellary District.]

(3) It shall come into force in such areas and on such dates as the Government may, by notification in the official Gazette, direct.

Definitions. 2. In this Act unless there is anything repugnant in the subject or context :

(*a*) the expression " holder," " holding," " tenant," and " village " shall have the meaning assigned to them in the Mysore Land Revenue Code, 1888 ;

(*b*) " agriculture " includes horticulture, the use of land for any purpose of husbandry inclusive of the keeping or breeding of live-stock, poultry or bees, sericulture and the growing of fruits, vegetables and the like :

(*c*) " board " means a Debt Conciliation Board established under sub-section (1) of section 3 ;

(*d*) " creditor " means a person to whom a debt is owing and includes a co-operative society ;

(*e*) " debt " includes all liabilities owing to a creditor, in cash or kind, secured or unsecured, whether payable under a decree or order of a civil court or otherwise, and whether mature or not, but shall not include arrears of

1. See the Mysore Adaptation of Laws Order, 1953.

wages, land revenue or anything recoverable as an arrear of land revenue, rent as defined in the Mysore Land Revenue Code, 1888, [1][or any liability in respect of maintenance, whether under decree of Court or otherwise, or any money for the recovery of which a suit is barred by limitation ;

(*f*) " debtor " means a person—

(i) who earns his livelihood mainly by agriculture or who is a holder, whether he cultivates the land personally or otherwise ; and

(ii) whose debts exceed one hundred rupees.

(*g*) " prescribed " means prescribed by rules made under this Act ;

(*h*) " secured debt " includes mortgage debt or any debt for which there is security, lien or charge on immovable property created by deed, statute or otherwise ;

(*i*) " secured creditor " means a creditor who holds for his debt a security by way of mortgage, lien or charge on immovable property created by a deed, statute or otherwise.

Establishment of Debt Conciliation Boards.

3. (1) The Government may establish a Debt Conciliation Board for any district or part of a district. Such board shall consist of a Chairman and two members appointed by the Government which may, for reasons to be recorded in writing, cancel any appointment or dissolve any board.

(2) The Chairman and every member of a board so established shall be appointed for a term not exceeding three years. Such Chairman or member may, on the expiration of the period for which he has been appointed, be again appointed for a further term not exceeding three years.

(3) A board shall have such quorum as may be prescribed.

[2][(4) A Board having the prescribed quorum may act notwithstanding any vacancy through death, resignation or removal in the number of its members other than the Chairman.]

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1. Added by Act XXVII of 1942.

2. Inserted by Act XXVII of 1942.

[1](5) Where the Chairman and members of a board are unable to agree, the opinion of the majority shall prevail. Where the board is equally divided, the Chairman shall have a casting vote.

[1](6) When a board is dissolved or otherwise ceases to exist, the Government may, at any time establish another board for the area for which the former board was established and may declare the board newly established to be the successor in office of the board which has ceased to exist and such board shall exercise all the powers under the Act.

Application for settlement between debtor and his creditors.

4. (1) A debtor may make an application for the settlement of his debts to the board established for the local area within which he ordinarily resides, or if no board has been established for that local area, to the board established for any local area in which he holds immovable property, if any, but he shall not apply to more than one board.

(2) Unless the debtor has already made an application under sub-section (1), any of his creditors may make an application to a board to which the debtor might have applied under that sub-section.

(3) If applications for the settlement of the debts of the same debtor are made to more than one board, such applications shall, in accordance with rules made under this Act, be transferred to and dealt with by one board as one single application.

Application for settlement of joint debts.

[2][**4-A.** If a debtor is jointly liable with other persons for a debt, he may make an application under sub-section (1) of section 4 for relief in respect of his liability in regard to such debt, and the Board, after consideration of the facts and circumstances of the case may pass such orders as it thinks fit regarding the debt so far as such applicant is concerned and such orders of the Board shall not be questioned in any Civil Court:

Provided that an order of the Board under this sub-section shall not affect the liability of any other person who is jointly liable with the debtor for the debt, but in no case shall the creditor, to whom the debt is due, be

1. Sub-sections (4) and (5) of section 3 renumbered as sub-sections (5) and (6) respectively, by Act XXVII of 1942.
2. Inserted by Act XXVII of 1942.

entitled to realise more than his dues from the persons jointly liable.]

5. Every application to a board shall be in writing and shall be signed and verified in the manner prescribed by the Code of Civil Procedure, 1911, for signing and verifying plaints. Verification of application.

6. (1) Every application made by a debtor to a board shall contain the following particulars, namely :— Particulars to be stated in application.

(*a*) a statement that the debtor is unable to pay his debts ;

(*b*) the place where he resides ;

(*c*) the amount and particulars of all claims against him together with the names and residences of his creditors and, in the case of a creditor who is a minor or a lunatic, the name of his guardian or the person in whose charge the property of such creditor is, so far as they are known to, or can, by the exercise of reasonable care and diligence, be ascertained by him ; and

(*d*) particulars of the debtor's property, both movable and immovable (including claims due to him), a specification of the value thereof and of the places where the same may be found and details of any mortgage, lien or charge subsisting thereon.

(2) Every application made by a creditor shall contain the following particulars, namely :—

(*a*) the place where the debtor resides ; and

(*b*) the amount and particulars of his claim against

7. The application shall be rejected if it does not comply with any of the requirements mentioned in sections 5 and 6. Rejection of application.

The rejection of an application under this section shall not preclude the applicant from making a fresh application.

8. (1) On receipt of an application under section 4, the board shall unless it rejects the application under section 7 pass on order fixing a date and place for hearing the application. Procedure on application.

(2) Notice of the order under sub-section (1) shall be sent by registered post to the debtor and creditors.

(3) If the application is made by a creditor, the debtor shall on his appearance, furnish the particlars mentioned in sub-section (1) of section 6 and notice shall be sent to all the creditors specified by him.

Dismissal of application.

9. [1](1) An application under section 4 may be dismissed by the board at any stage of the proceedings :

(*a*) if, for reasons to be stated in writing, the board does not consider it desirable or practicable to effect a settlement of debts ; or

(*b*) if, in the opinion of the board, the applicant fails to pursue his application with due diligence :

Provided that, when such applicant is a creditor, the board instead of dismissing such application, may substitute the debtor or any other creditor, who shall thereafter be deemed to be the applicant for the purposes of this Act, or

[2][Provided further that if the Board dismisses such application on the failure of the debtor to furnish the particulars required under sub-section (3) of section 8, the Board may allow against the debtor such costs as it considers reasonable.]

(*c*) if the application includes a claim which in the opinion of the board, is collusive and intended to defraud any creditor.

[3][(2) The Board shall dismiss the application made under sub-section (1) of section 4 if it is satisfied that the debtor has within two years previous to the date of the first application made by him transferred any of his property with intent to defraud, or to give fraudulent preference to, any creditor.]

Notice calling upon creditors to submit statements of debts.

10. (1) If, after examining the debtor, it is in the opinion of the board desirable to attempt to effect a settlement between him and his creditors, a notice shall be issued and served or published in the manner prescribed,

1. Section 9, renumbered as sub-section (1) of section 9 by Act XXVII of 1942.
2. Added by Act XXVII of 1942.
3. Inserted by Act XXVII of 1942.

calling upon every creditor of the debtor to submit a statement of debts owed to such creditor by the debtor. Such statement shall be in writing and shall be signed and verified in the manner prescribed by the Code of Civil Procedure, 1911, for signing and verifying claims and shall be submitted to the board within two months from the date of service or publication of the notice as the case may be :

Provided that, if the board is satisfied that any creditor was, for good and sufficient cause, unable to comply with such directions, it may extend the period for the submission of his statement of the debt owed to him.

(2) Every debt of which a statement is not submitted to the board in compliance with the provisions of sub-section (1) shall be deemed for all purposes and all occasions to have been duly discharged :

Provided that, if a creditor proves to the satisfaction of the board or a civil court that the notice was not served on him or that he had no knowledge of the publication thereof or that for some other sufficient reason, he was unable to submit the statement, the board or court may revive the debt, if the creditor files an application in that behalf within two months after he becomes aware of the proceedings taken under this section :

Provided further, that a creditor shall not be entitled to apply under this sub-section to the board and to a civil court simultaneously or to apply to either the board or a civil court after having applied to the other.

Procedure on submission of statement of debts.

11. (1) Every creditor submitting a statement of the debts owed to him in compliance with a notice issued under sub-section (1) of section 10 shall furnish along with such statement full particulars of all such debts and shall at the same time produce all documents, including entries in books of account on which he relies to support his claims, together with a true copy of every such document.

(2) The board shall, after marking for the purpose of identification every original document so produced and verifying the correctness of the copy, retain the copy and return the original to the creditor.

(3) If any document which is in the possession or under the control of the creditor is not produced by him as

required by sub-section (1), the document shall not be admissible in evidence against the debtor in any suit brought by the creditor or by any person claiming under him for the recovery of the debt :

Provided that, the board or the court shall have power to excuse for valid reasons any default or delay in producing the document and to grant reasonable time for producing the same in any proceeding pending before it.

Power of board to decide dispute as to the existence or amount of assets.

12. (1) The board shall call upon the debtor and each creditor respectively to explain his case regarding each debt.

(2) If there is a dispute as to the existence or the amount of the debt due to any creditor or the assets of any debtor, the board may decide the matter after taking such evidence as may be adduced by all the parties concerned and such decision shall be binding on all parties in all proceedings before the board :

Provided that a decree of a civil court relating to a debt shall be conclusive evidence as to the existence and amount of the debt.

(3) The board shall prepare a complete schedule of the creditors and of the assets and liabilities of the debtor.

Power of board to require attendance of persons and production of documents.

13. (1) Subject to rules made under this Act, a board may exercise all such powers connected with the summoning and examining of parties and witnesses and with the production of documents as are conferred on a civil court by the Code of Civil Procedure, 1911.

(2) Any person present may be required by a board to furnish any information or to produce any document then and there in his possession or power.

Agreement of amicable settlement, its registration and effect.

14. (1) If the creditors to whom more than 50 per cent of the total amount of the debtor's debts is owing come to an amicable settlement with the debtor, such settlement shall forthwith be reduced to writing in the form of an agreement recording the amounts payable to such creditors and the manner in which and the times at which, they are to be paid. Such agreement, if considered equitable by the board, shall be read out and explained to the parties concerned, and shall be signed or otherwise authenticated by the board and the parties who have agreed to the amicable settlement :

Provided that, when a co-operative society is one of such creditors, no settlement, in so far as it affects the debts owing to such society, shall be valid without the previous approval in writing of the Registrar of Co-operative Societies in Mysore :

[1] * * *

[2][(2) Where an agreement is recorded under sub-section (1) and the Board considers that an offer made by the debtor for the settlement of any debt not included in the amicable settlement as a fair offer which the creditor concerned ought reasonably to accept, it may pass an order that the debt to which the offer relates shall be settled in accordance with such offer :

Provided that for the purposes of this sub-section an offer shall not be considered by the Board to be a fair offer if its terms are less favourable than the terms of the amicable settlement relating to a debt of the same description :

Provided further that a refusal by a secured creditor of an offer made by the debtor shall not be considered unreasonable if the offer involves any reduction of the principal.]

[3][(3) An agreement made under sub-section (1) [2][or an order passed under sub-section (2)] shall within thirty days from the date of the making thereof, be registered under the Mysore Registration Act, 1903, by the Chairman of the board in such manner as may be prescribed and it shall then take effect as if it were a decree of a civil court, and be executable as such.

[4][*(3) (*a*) Notwithstanding anything contained in the Mysore Registration Act, 1903, it shall not be necessary for the Chairman or any member of the Board or any party who has signed or otherwise authenticated the agreement referred to in sub-section (1), or the order made under sub-section (2) to appear in person or by agent at any registration office in any proceeding connected with the registration of such agreement, or to sign as provided in section 58 of that Act.

1. Second proviso to section 14 (1) omitted by Act XXVII of 1942.
2. Inserted by Act XXVII of 1942.
3. Sub-sections (2), (3) and (4) of section 14. renumbered as sub-sections (3), (4) and (5) by Act XXVII of 1942.
4. Substituted for sub-section (4) as renumbered by Act XXVII of 1942.
* Sic. should be (4.)

(*b*) The registering officer to whom any such agreement is sent for registration may, if he thinks fit, refer to the Chairman of the Board or to any other person for information respecting the same, and on being satisfied of the execution thereof, shall register the agreement.]

(5) If after the making of an agreement under sub-section (1), any debt is revived by the board or civil court under sub-section (2) of section 10, the agreement and all proceedings taken in pursuance thereof shall stand cancelled; the application under section 4 shall be deemed to have been received in the office of the board on the date of such revival; and all the provisions of the Act, shall apply in respect of the application accordingly.

[1][(6) When a secured creditor does not agree to the settlement under sub-section (1) and in cases governed by sub-section (2), such refusal is not considered unfair by the Board when passing an order, such settlement or order shall limit his rights to proceed against the secured property only.]

[1][**14-A.** When an agreement or an order registered under sub-section (3) of section 14 relates to a debt which is secured by a mortgage, lien or charge on any immovable property of a debtor, such mortgage, lien or charge shall subsist to the extent of the amount payable to the creditor in respect of such debt in accordance with the terms of the agreement or the order, until such amount has been paid or the property has been sold for the satisfaction of such debt.]

Properties exempt from attachment not to be taken into account.

15. In any scheme of debt conciliation under this Act, such properties as are exempt from attachment under the Code of Civil Procedure, 1911, shall not be taken into account and shall be left to the judgment-debtor free from any liability for his debts.

Maximum amount allowable in satisfaction of a debt.

16. In any scheme of debt conciliation under this Act, no creditor shall be allowed a greater amount in satisfaction of both principal and interest than twice the amount of the principal and if the debt was incurred

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1. Inserted by Act XXVII of 1942.

before the first day of June 1935, twice the amount due on the said date.

Power of board to dismiss application.

17. If no amicable settlement is arrived at under sub-section (1) of section 14 within 12 months from the date of the application under section 4, the board shall dismiss the application.

Recovery of sums due under agreement.

[1][**18.** (1) If a debtor defaults in paying any amount awarded as costs under the second proviso to clause (b) of sub-section (1) of section 9, or any amount due in accordance with the terms of an agreement registered under sub-section (3) of section 14, such amount shall be recoverable as an arrear of land revenue on the application of the creditor made to the Deputy Commissioner within ninety days from the date of default accompanied by a certificate from the Board regarding the amount due.]

(2) Where the Deputy Commissioner fails to recover as an arrear of land revenue any part of such amount, he shall certify that it is irrecoverable and thereupon the agreement shall cease to subsist.

(3) Where an agreement ceases to subsist, any amount which was payable under such agreement but has not been paid shall be recoverable as if a decree of a civil court had then been passed for its payment.

Power to deposit amount of instalment with the Deputy Commissioner.

[2][**18-A.** (1) If a creditor refuses to accept any amount tendered to him by his debtor in accordance with the terms of an agreement or order registered under the provisions of this Act, or if in any case, the debtor is doubtful as to the person entitled to receive such amount, the debtor may apply to the Deputy Commissioner for permission to deposit such amount with him.

(2) An application made under sub-section (1) shall be in writing and shall contain—

(*a*) a statement of the grounds on which it has been made,

(*b*) the name of the creditor to whose credit the deposit is to be entered, and

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1. Substituted by Act XXVII of 1942.
2. Sections 18-A to 18-D inserted by Act XXVII of 1942.

(*c*) the name of the person to whom payment was last made and of the person now claiming it.

18-B. (1) If it appears to the Deputy Commissioner that the applicant is entitled to make the deposit under section 18-A, he shall receive such deposit and give a receipt therefor.

(2) The Deputy Commissioner shall cause a notice of such deposit to be served on every person, who, he has reason to believe, claims or is entitled to it, and may pay the amount thereof to any person appearing to him to be entitled to it subject to the taking of proper security where claimants are under any legal disability and shall, in all doubtful claims, retain it pending the decision of a Civil Court as to the person entitled to it.

Debtor to be deemed to have fulfilled terms of agreement.

18-C. A debtor who has made a deposit under section 18-B shall be held to have fulfilled the terms of the agreement or the order.

Bar of suits and other legal proceedings.

18-D. No suit or other legal proceeding shall be instituted against any officer in respect of anything done regarding a deposit under this Act, but nothing in this section shall prevent any person entitled to recover the amount of such deposit from recovering it from any person to whom it has been paid under section 18-B.]

Grant of certificate by board in respect of certain debts.

19. (1) Where, during the hearing of any application made under section 4, any creditor refuses to agree to an amicable settlement, the board shall, if it is of opinion that the debtor has made such creditor a fair offer which the creditor ought reasonably to accept, grant the debtor a certificate, in such form as may be prescribed in respect of the debts owed by him to such creditor.

The board, in coming to a decision whether the offer made is fair or not, may take into consideration—

(i) the fall or rise in the value of land and its produce, in the locality ;

(ii) the amount of consideration actually received ;

(iii) the reasonableness of the rates of interest ;

(iv) the onerous condition, if any, subject to which the loan was granted ;

(v) whether at any time, the creditor or the debtor was offered settlement of the debt in full or part and if so what the terms were; [1]

(vi) any other particulars which the board thinks it desirable to take into account; [2][and

(vii) the repaying capacity of the debtor.]

Power of court to disallow cost or interest.

(2) Where any creditor sues in a civil court for the recovery of a debt in respect of which a certificate has been granted under sub-section (1), the court shall, notwithstanding the provisions of any law for the time being in force, not allow the plaintiff any costs in such suit, or any interest on the debt after the date of such certificate in excess of simple interest at 6 per cent per annum on the principal amount due on the date of such certificate.

Decrees in suit after registration of agreement not to be executed.

(3) Where after the registration of an agreement under [3][sub-section (3) of section 14,] any unsecured creditor sues for the recovery of a debt (other than a debt incurred subsequent to such agreement) in respect of which a certificate has been granted under sub-section (1), or any creditor sues for the recovery of a debt incurred after the date of such agreement, any decree passed in such suit shall, notwithstanding anything contained in the Code of Civil Procedure, 1911, not be executed as against the assets, if any, set apart in the agreement for the satisfaction of the agreed debts until all amounts recorded as payable under such agreement have been paid.

Bar of Civil Suits.

20. No civil court shall entertain—

(*a*) any suit in respect of—

(i) any matter pending before a board; or

(ii) the validity of any procedure or the legality of any agreement made under this Act; or

(iii) the recovery of any debt recorded as wholly or partly payable under an agreement registered under sub-section (2) of section 14 from any person who, as a debtor was party to such agreement whether such agreement is subsisting or not; or

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1. The words "and" omitted by Act XXVII of 1942.
2. Added by Act XXVII of 1942.
3. Substituted by Act XXVII of 1942.

(iv) the recovery of any debt which has been deemed to have been duly discharged under sub-section (2) of section 10 except a debt which is revived under the proviso to that sub-section ;

(*b*) any application to execute a decree the execution of which is suspended under sub-section (3) of section 19.

Avoidance of certain transfers of debtor's property.

21. Every transfer of property made, with intent to defeat or delay the creditors of the debtor, after an application has been made to a board under section 4 and until the agreement registered in respect of such application has ceased to subsist, shall be voidable at the option of any creditor so defeated or delayed.

Alienation made with sanction of board not to be considered as a fraudulent preference.

22. Any alienation of land for a fair price made with the sanction of the board in pursuance of or to carry out the agreement mentioned in section 14 shall not be considered as a fraudulent preference under the Mysore Insolvency Act, 1925 nor shall such alienation be voidable under section 53 of the Transfer of Property Act, 1918.

Bar of appeal or revision.

23. No appeal or application for revision shall lie against any order passed by a board.

Power of board to review its order.

24. A board may, on the application from any person interested made within ninety days of the passing of an order, review any order passed by it and pass such order in reference thereto as it thinks fit;

Provided that, no order shall be varied or reversed unless notice has been given to the persons interested to appear and be heard in support of such order.

Appearance of party before board by agent or by legal practitioner.

25. In any proceedings before a board, any party may appear in person or by an agent authorized in writing or, with the permission of the board, by a legal practitioner.

Suspension of pending application or suit.

26. When an application has been made to a board under section 4, any suit or other proceedings then pending before a civil court in respect of any debt for the settlement of which application has been made shall be suspended until the board has dismissed the application.

[1][Provided that such application is made,

(i) in the case of a suit, within three months after the date of service of summons on the defendant, or within three months from the date of commencement of the Mysore Debt Conciliation (Amendment) Act, 1951, whichever is later; and

(ii) in the case of any other proceeding, within three months from the date of commencement of the Mysore Debt Conciliation (Amendment) Act, 1951.

Explanation.—A defendant shall be deemed to have been served with summons,

(i) on the date on which summons is served, or

(ii) on the date on which he takes notice of suit and enters appearance, or

(iii) on the date on which he files an application to set aside an *ex parte* decree.]

Submission of reports by boards regarding sums due to Government.

27. Where in the course of an inquiry into an application made under section 4, a board finds that there is any sum owing to Government on account of loans advanced under the Land Improvement Loans Act, 1890, or otherwise, the board shall report this fact through the Deputy Commissioner to the Revenue Commissioner in Mysore.

Computation of period of limitation for suits and proceedings.

28. (1) In calculating the period of limitation for any suit filed in, or proceedings before, a civil court for the recovery of a debt which was the subject of any proceedings under this Act, the time during which such proceedings were pending as well as the time taken for the obtaining of certified copies of the order of the board shall be excluded.

(2) The period during which proceedings under this Act have been pending including the actual period fixed in the agreement for payment of all the debts shall, in all suits filed or proceedings taken, in civil courts to recover debts, be excluded from computation under section 48 of the Code of Civil Procedure, 1911, or under the Mysore Limitation Act, 1911.

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1. Added by Act VII of 1951.

Members of board deemed to be public servants.

29. The members of a board shall be deemed to be public servants within the meaning of the Indian Penal Code as in force in Mysore.

Power to make rules.

30. In addition to any power specially conferred by this Act, the Government may make rules not inconsistent with this Act—

(*a*) prescribing the quorum for, and regulating the procedure before a board ;

(*b*) prescribing the manner in which notices shall be issued and served or published under sub-section (1) of section 10 ;

(*c*) prescribing the charges to be made by a board for anything done under this Act and the persons by whom and the manner in which such charges shall be paid ;

(*d*) prescribing the records to be kept and the returns to be made by a board ;

(*e*) prescribing the allowances, if any to be paid to the chairman and members of a board ;

(*f*) regulating the power of a board to summon parties and witnesses under section 13 and the grant of expenses to witnesses ;

(*g*) prescribing the place at which and the manner in which an agreement shall be registered under sub-section (2) of section 14 ;

(*h*) prescribing the form of certificate to be granted under sub-section (2) of section 18 or sub-section (1) of section 19 ; and

(*i*) generally, for the purpose of carrying into effect the provisions of this Act.

General provisions regarding rules.

31. (1) All rules made by Government under section 30 shall be subject to the condition of previous publication.

(2) In making any rule, Government may direct that a breach thereof shall be punishable with fine which may extend to fifty rupees, and where the breach is a continuing one, with further fine which may extend to ten rupees for every day during which the breach continues after the first breach.